IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32 (2) (b)]
Description of case

Criminal Appeal No. 1575 of 2001 **Decided on: May 16, 2006**

WITH

Criminal Appeal No. 1576 of 2001

AND

Govt. Appeal No. 1085 / 2001

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date. 16.05.2006

(Initial of Judges)

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1575 of 2001
(Old No. 3164 of 1984)

Tara Singh
S/o Diwan Singh
R/o Village Bhatti Gaon,
P.S. Patwari Chetra Bankot,
District Pithoragarh.

……. Appellant

Versus

The State …… Respondent

Mr. B.S. Adhikari, Advocate for the appellant.
Mr. D.K. Sharma, Govt. Aadvocate a/b Mr. H.C. Pande, A.G.A. for the respondent-State.

WITH

Criminal Appeal No. 1576 of 2001
(Old No. 3187 of 1984)

Ramesh Singh
S/o Diwan Singh
R/o Village Bhatti Gaon,
Patti Walla Athigaon, P.O. Bankot,
District Pithoragarh.

……. Appellant

Versus

The State …… Respondent

Mr. Dinesh Chauhan and Ratal Lal, Advocate for the appellant.
Mr. D.K. Sharma, Govt. Advocate a/b Mr. H.C. Pande, A.G.A. for the respondent-State.

AND

Government Appeal (Against Acquittal) No. 1085 / 2001
(Old No. 398 of 1985)

The State …….. Appellant

Versus

1. Diwan Singh
   S/o Nathu Singh
2. Diwan Singh
   S/o Mahendra Singh
   Both R/o Village Bhatti Gaon,
   Patti Bankot,
   Tehsil and District Pithoragarh.

…….. Respondent

Mr. D.K. Sharma, Govt. Advocate a/b Mr. H.C. Pande, A.G.A. for the appellant-State.
None for the respondents.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

Dt: May 16, 2006.

[Per Hon'ble Prafulla C. Pant, J.]

All the above three appeals have arisen out of the same judgment and order dated 16.11.1984, passed in Session Trial No. 16 of 1983 by, the then, learned Sessions Judge, Pithoragarh, whereby appellant Tara Singh and appellant Ramesh Singh have been convicted under Section 302 of the Indian Penal Code, 1860 (for brevity hereinafter I.P.C.) and also under Section 201 of I.P.C., and each one of them has been sentenced to imprisonment for life under Section 302 and four years rigorous imprisonment under Section 201 of I.P.C. Learned

Sessions Judge, by the same judgment and order has acquitted Diwan Singh S/o Nathu Singh and Diwan Singh S/o Mahendra Singh, from the charges framed against them.

2) Prosecution story, in brief, is that appellants Tara Singh, Ramesh Singh, respondents Diwan Singh (S/o Nathu Singh) and Diwan Singh (S/o Mahendra Singh) are resident of the same village Bhatti Gaon (District Pithoragarh) and closely related to each other. Convict-appellant Tara Singh is son of accused Diwan Singh (S/o Nathu Singh), and convict-appellant Ramesh Singh is son of accused Diwan Singh (S/o Mahendra Singh). The accused persons had enmity with the family of the complainant Pratap Singh (P.W.4) and his brother Mohan Singh (father of the deceased). About three days prior to the date of incident, the accused persons gave a threat to the complainant and his family that they would put an end to his family lineage. Thereafter, on 15.10.1982, at about 1:30 P.M., while grazing his cattle, Ram Singh (father of complainant Pratap Singh) asked his grandson Bharat Singh (deceased) to look after the cattle till he returns there after having his lunch from his house. As told by his grandfather, Bharat Singh, a boy aged five years, started grazing the cattle. After sometime when Ram Singh came back from his house, he found that the boy was not there. He called out his grandson by name but there was no response. On this Ram Singh with the help of his son Pratap Singh (P.W. 4) started their search for the boy. In the evening, Pratap Singh (P.W.4) informed the Patwari (a revenue officer) that Bharat Singh was missing. Thereafter,

again they started searching for the missing boy till late night and again from the next morning. At about 11:00 A.M., on 16.10.1982, the dead body of the boy (Bharat Singh) was found lying in a cave. Immediately, first information report (Ext.A-5) was lodged with the Patwari. (In Uttaranchal hills Patwaris' have police powers to register and investigate the crimes). In said report accused Diwan Singh S/o Nathu Singh; accused Diwan Singh S/o Mahendra Singh; and accused Ramesh Singh S/o Diwan Singh were named on suspicion by P.W.4, Pratap Singh (real uncle of the deceased). The dead body was taken in to custody by the Patwari Ganga Datt Pandey (Investigating Officer), P.W.5, who prepared the inquest report (Ext. A-6) sketch of the dead body (Ext. A-7), police form No. 13 (Ext. A-8), letter to the Chief Medical Officer (Ext.A-9) for getting conducted the postmortem report. He also prepared the sample seal (Ext. A-10). Dr. C.B. Pal (P.W.2) conducted the autopsy on 18.10.1982, at about 3:10 P.M., in the District Headquarters at Pithoragarh, and prepared the postmortem report (Ext. A-1). The said Medical Officer found following ante mortem injuries on the body of the deceased:

i) ***Ligature marking 2.5 cm in breadth encircling the neck transversally and obliquely. The whole of ligature mark depressed, encircling upto back of both ears. Knot of the left side.***

ii) ***Lacerated wound on the back of head measuring 3.5 cm X 1 cm X bone deep.***

iii) ***Abrasion mark measuring 3.5 Cm X 0.5 cm, obliquely on the left side of the forehead.***

iv) Contusion mark measuring 5 cm X 2 cm on the anterior part of the left axial.

v) Multiple contusion and abrasion mark present all over the body.

vi) Contusion mark 4 cm X 0.5 cm, just below the chin.

In the opinion of the Medical officer, who conducted the autopsy, the cause of death was Asphyxia. .

5) During investigation, Tara Datt (P.W. 1), Daan Singh (P.W.3) were also examined by the Investigating Officer Ganga Datt, who also prepared memos of recovery of blood stained cloths (Ext. A-12 and A-16), blood stained soil (Ext. A-13), site plan (Ext. A-11 and A-15) and, after investigation and Investigating Officer submitted the charge sheet (Ext. A-17) against four accused persons namely, Tara Singh, Ramesh Singh, Diwan Singh (S/o Nathu Singh) and Diwan Singh (S/o Mahendra Singh).

6) The concerned Magistrate, on receiving the charge sheet and after giving necessary copies to the accused persons, committed the case to the court of sessions for trial. After hearing the parties on charge, learned Sessions Judge framed charge against the accused Diwan Singh (S/o Nathu Singh) and accused Diwan Singh (S/o Mahendra Singh) relating to offence punishable under Section 302 read with Section 34 of the I.P.C., and he further framed charges against accused Tara Singh (appellant) and accused Ramesh Singh (appellant) under three heads i.e. under Section 302 of I.P.C., under Section 364 of I.P.C. and under Section 201 of I.P.C. All the accused persons pleaded not guilty and claimed to be tried.

7) Learned Sessions Judge after recording the evidence adduced by the prosecution, put the same to the accused persons under Section 313 of the Code of Criminal Procedure, 1973. The accused persons did not adduce any evidence in defence except copies of the first information reports (Ext. B-1 to Ext. B-4), copy of order Ext. B-5 and copy of charge sheet (Ext. B-6). The learned Sessions Judge, after hearing the arguments of the prosecution and the defence found accused Tara Singh and accused Ramesh Singh guilty of the offences punishable under Section 302 and 201 of I.P.C., and convicted them accordingly. The charge framed against the other two accused persons namely, Diwan Singh (S/o Nathu Singh) and Diwan Singh (S/o Mahendra Singh) were not found proved from the evidence on record, and accordingly, they were acquitted by the trial court. Each of the convicts, after hearing on sentence, were sentenced to life imprisonment under Section 302 of I.P.C. and rigorous imprisonment of four years under Section 201 of I.P.C. Aggrieved by the judgment and order of the trial court, convict Tara Singh and convict Ramesh Singh filed separate appeals before the Allahabad High Court. On the other hand, the State also filed appeal against acquittal Diwan Singh (S/o Nathu Singh) and Diwan Singh (S/o Mahendra Singh) with the leave of the court. All the three appeals are received by transfer from Allahabad High Court to this Court under Section 35 of the U.P. Re-organization Act, 2000, for their disposal.

8) We heard learned counsel for the parties and perused the entire evidence on record.

9) It is not a case of direct evidence in which any witness has seen accused persons strangulating Bharat Singh (deceased). But there is chain of circumstances which is alleged by prosecution and in support of which evidence has been adduced to prove the charges against the appellants Tara Singh and Ramesh Singh. The chain of circumstances consists of following links:

i) The accused persons were harbouring enmity against the family of deceased.

ii) Immediately three days before the date of incident from the side of accused persons threat was given to the family of the deceased that their family lineage would be brought to an end.

iii) Three days after the treat Bharat Singh (deceased), young boy of five years, who was the only member of third generation in the family of Ram Singh (grandfather of the deceased) was found missing.

iv) half an hour before he was found missing, when he was grazing the cattle all alone, it was seen by Dan Singh (P.W. 3), of one of the prosecution witnesses, that the appellants Ramesh Singh and Tara Singh came to near deceased and sat with him.

v) Thereafter, Tara Datt (P.W. 1) saw appellants Tara Singh and Ramesh Singh taking Bharat Singh with them by holding him physically and his mouth gagged.

vi) The boy (Bharat Singh) could not be traced out on 15.10.1982 even after in all the places where

he could have been found. The next day i.e. on 16.10.1982, the dead body of the deceased, on search, was found in a cave.

vii) On postmortem of the dead body it was found that the boy had died of strangulation.

10) Now, this Court has to see that to what extent the prosecution has succeeded in proving the aforesaid circumstances and whether, all the links are complete to bring home the charge framed against the appellants Tara Singh and Ramesh Singh, or not? As far as enmity is concerned the said fact is established from the oral evidence on record not only by the statement of Pratap Singh (P.W.4) but also from the copies of the reports lodged with the Patwari, Ganga Datt Pandey (P.W.5). Relating to incidents of 12th, 13th and 14th of October, 1982 and the reports Ext. B-1 to Ext. B-3 made by accused Diwan Singh against the complainant Pratap Singh between 1978 to 1981 also reflect that there was admitted enmity between the parties.

11) The next circumstance relates to the threat given by the accused persons to the family of the informant that their lineage would be brought to an end. P.W. 4, Pratap Singh (informant) has stated on oath that in his family he and his brother Mohan Singh are the only two real brothers (sons of Ram Singh) and Bharat Singh was the lone living member of their family of the next generation. This witness has further stated that the accused persons used to say that they would commit “NATHIYAL” threatening to bring their pedigree to an end. This fact gets corroboration from the

report (Ext. A-3) recorded on 14.10.1982 by the Patwari relating to the incidents of 12th, 13th and 14th of October, 1982. In para 2 of said report, it is clearly mentioned that on 12.10.1982, appellant Ramesh Singh and accused Diwan Singh (S/o Nathu Singh) and Diwan Singh (S/o Mahendra Singh) openly gave threat to commit 'Nathiyal'. [It is pertinent to mention here that appellant Tara Singh is son of co-accused Diwan Singh (S/o Nathu Singh)]. In said report it is also mentioned that on the very day i.e. 12.10.1982, informant went to lodge first information report but on that day patwari was not available in his office. In the above circumstances, this fact is also proved on the record that from the side of accused persons threat was given to the family of Ram Singh that his lineage would be brought to an end.

12) The third circumstance relates to the fact that on 15.10.1982, Ram Singh called his grandson Bharat Singh (deceased),at the time of grazing the cattle, at about 1:30 P.M., to look after the cattle till he comes back after having his lunch; and when he came back after the lunch he found his grandson missing. Ext. A-4, copy of the extract of general dairy recorded on 15.10.1982 shows that a report was given by P.W. 4, Pratap Singh S/o ram Singh to the patwari, at about 7:00 P.M., informing that his nephew bharat Singh, aged 5 years, is missing since 2:00 – 2:30 P.M. and the search is on. Pratap Singh (P.W. 4) in his oral evidence has also stated that on 15.10.1982, at about 2:30 P.M., his nephew Bharat Singh, who was grazing cattle near Gangnath Temple, was found missing after his father Ram Singh returned back there. Daan Singh (P.W. 3) is

close relative of both the sides. He has corroborated the fact that he also joined the informant and other villagers in the search of Bharat Singh (deceased), after he was found missing from the place near Gangnath Temple. As such, this fact is also proved beyond doubt that in between 2:00-2:30 P.M. on 15.10.1982, Bharat Singh was found missing from the place where he was grazing the cattle.

13) Fourth circumstance against the appellants Tara Singh and Ramesh Singh is this that they were found sitting with the deceased on 15.10.1982, at about 1:30 - 2:00 P.M., at the place of occurrence. Daan Singh (P.W. 3) is the sole witness of this fact. As mentioned above, he is related to the informant family as well as of the family of the accused persons. Daan Singh (P.W. 3) has stated categorically that on 15.10.1982, at about 1:30 –2:00 P.M., he was coming towards the village From Bisonia Tok with a bundle of peelings of the wood on his head, and saw that Bharat Singh (deceased) was sitting near Gangnath Temple, grazing goats. This witness further states that he saw appellant Ramesh Singh and appellant Tara Sing coming towards Bharat Singh and both of them sat with him. Later he came to know that Bharat Singh is missing and he also joined the villagers in his search. The statement of this witness is natural and also appears to be true, and there is no reason on the record to disbelieve the statement of this witness who is equally related to both the rival families.

14) Fifth circumstance, and most important of all, is that Tara Datt (P.W. 1), who is resident of a near by adjoining village saw appellants Ramesh Singh and Tara Singh taking

Bharat Singh with them. Tara Dat (P.W. 1) states on oath that on the date of incident, he was also grazing his cattle at some distance and saw the child (deceased) being taken by the appellants physically. He saw Tara Singh and Ramesh Singh taking Bharat Singh from the side of Gangnath Temple towards downward direction. However, as to the non disclosure of this fact to the family of the deceased before the first information report was lodged by Pratap Singh (P.W. 4), this witness has given the explanation that he had gone next day morning to worship 'Shanigaad Dewta', where he sacrificed a goat and returned back from there after five days. Tara Datt (P.W. 1) is an independent witness, who appears to have no enmity with either of the rival families. There is nothing on record which creates reasonable doubt as to the veracity of statement of this witness.

15) Sixth circumstance, which is found proved on the record, is that after the search of the missing boy on 15.10.1982 evening which re-started next day since morning, the dead body was found on 16.10.1982 lying in a cave down in the hill. This fact is corroborated not only by the statement of Pratap Singh (P.W. 4), uncle of the deceased, but also from the statement of Daan Singh (P.W. 3) corroborated by statement of Patwari, Ganga Datt (P.W. 5). Inquest report (Ext. A-6) is proved by the statement of the prosecution witness Ganga Datt (P.W. 5), who after preparing the inquest report also prepared the sketch of the dead boy (Ext. A-7), police form No. 13 (Ext. A-8), letter to the Chief Medical Officer (Ext. A-9) and sample of seal (Ext. A-10).

16) Seventh circumstance relates to the postmortem report of the deceased, which corroborates the prosecution story. The postmortem report (Ext. A-1) read with statement of Dr. C.B. Pal (P.W. 2), who conducted the postmortem examination, clearly shows that Bharat Singh (deceased) died of Asphyxia. There was ligature mark encircling the neck of the deceased, found by the Medical officer (P.W. 2). As such, this circumstance is also proved on the record.

In view of above discussion, all the circumstances in the form of complete chain are proved and leave no room for doubt as against the appellant Tara Singh and appellant Ramesh Singh, as to their involvement in the commission of murder of Bharat Singh, with common intention in the crime.

17) Each of the learned counsel for the appellant Ramesh Singh and Tara Singh argued that the appellants have been falsely implicated due to the enmity. It is true that from the evidence on record it is established that there was enmity between the families of appellants and complainant. Ext. B-1, Ext. B-2 and Ext. B-3 are the papers filed in defence, which show that as against P.W. 4(informant) Pratap Singh S/o Ram Singh, the accused Diwan Sing lodged three F.I.Rs. between 1979-81 i.e. before the year on incident. The aforesaid documents further corroborate the enmity between the families of the informant and the accused persons. It is a settled principle of law that enmity is a double-edged weapon. In the present facts and circumstances of this case, as established on the record, it is

difficult to believe that the appellants have been implicated falsely.

18) On behalf of the appellant Tara Singh it is also argued that he is not named in the F.I.R. From the evidence on record, it is clear that at the time when the F.I.R. was lodged, since there was no known eye witness of the crims, as such, all the names of the culprits could not have been mentioned. Only three names were mentioned on suspicion. It is only during the investigation when statement of Tara Datt (P.W. 1) and Daan Singh (P.W. 3) were recorded, role of appellant Tara Singh in the crime also came to light. As such, in our opinion, mere non-mentioning of name of appellant Tara Singh in F.I.R. does not make any difference, in the circumstances of the case.

19) On behalf of both the appellants it is argued that Tara Datt (P.W. 1) could not have seen appellants from a distance of ¾ quarter of kilometer. While appreciating that part of evidence of Tara Datt (P.W. 1), Court has to kept it in mind that the place where the appellants were seen taking to the deceased is not in the plains, but in the hilly terrain, and the aerial distance is much below than the land distance.

20) Our attention was also drawn on behalf of appellant to the minor contradictions in the statements of Daan Singh (P.W. 3) on one hand and that of Ganga Datt (Investigating Officer) on the other hand. We have gone through the same and not a single contradiction is such which creates

reasonable doubt on the truthfulness of the statement made by Daan Singh (P.W. 3).

21) Lastly, it is also contended on behalf of the appellants that the conduct of the prosecution witnesses Tara Datt (P.W. 1) and Daan Singh (P.W. 3) is not natural. Learned counsel for the appellants failed to show us any material fact in the conduct of the witnesses which can shake their evidence. Normally, in the hills people do visit the Temples on foot to sacrifice goats in the name of their God. What Tara Datt (P.W. 1) has stated is that on the next day morning of the incident, he had gone to 'Shanigaad Dewta' to sacrifice his goat and came back only after five days. There is nothing unnatural in it. He was witness from a adjoining nearby village of the appellants and he has no enmity with either of the parties. Similarly, Daan Singh (P.W. 3) is an equidistant relative of the rival families having enmity and does not appear to be partial towards anyone, either in his statement or the conduct. Therefore, we are in agreement with the learned trial court that the prosecution has been successful in proving the charge framed against the appellant Tara Singh and appellant Ramesh Singh, under Section 302 read with Section 34 of the I.P.C.

22) As far as the Government appeal (against acquittal) No. 1085 of 2001 is concerned, after going through the entire evidence on record, we are of the view that charge as against Diwan Singh (S/o Nathu Singh) and Diwan Singh (S/o Mahendra Singh) is not proved beyond the reasonable doubt. The only evidence which has been adduced against

them is that they also conspired in the commission of crime. But unlike appellants Tara Singh and Ramesh Singh all the links do not rope the two Diwan Singhs. The only evidence as against these two is that of P.W. 4, Pratap Singh and their names figure in reports lodged by him. Since, there is admitted enmity between the family of informant and the family of these two accused persons, as such, they were rightly given benefit of doubt by the learned trial court as there was no corroborative evidence apart from giving threat to the informant's family, which by itself, is not sufficient to bring home charge as against them.

23) In the above, circumstances, in view of the reasons discussed above, all the three appeals are liable to be dismissed. The same are dismissed. The bail granted to appellant Tara Singh and appellant Ramesh Singh, is hereby cancelled. They shall be immediately taken into custody to serve out the sentence awarded against them.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt. May 16, 2006.
H. Negi